

VIA EMAIL

December 12, 2012

Planning Commission Chair Márquez and Members Faria, Lamnin, Lavelle, Loché, McDermott, and  
Trivedi  
City of Hayward  
777 B Street  
Hayward CA 94541-5007

Re: Alcohol Beverage Outlet Regulations: Recommended Revisions  
13 December 2012 Planning Commission Meeting: Work Session: Item 3

Subject: Suggested or Recommended Revisions

Planning Commission Chair & Members:

Together with certain others, I own the real property more particularly identified as Alameda County APN 078C-461-1-13 and -14; I'm writing today in regards to the above-referenced matter.

In particular, I'm writing this letter to supplement the correspondence I wrote to the City Council on 3 December; a copy of such letter is included in the staff report for tomorrow's work session.

We owners respectfully wish to make several suggestions or recommendations to those outlined in tomorrow's staff report. We believe the City would be wise to consider same, particularly in light of certain recent events at or near certain State-licensed on-sale alcohol establishments within the City. Such events include, but are not limited to, the recent shootings within the Dirty Bird Lounge at 29308 Mission Boulevard.

Our suggestions and recommendations — each in addition to and thus supplementing those outlined in my 3 December letter — are as follows:

1. We recommend splitting staff's recommendations into two (2) separate parts; in particular, we suggest breaking off the 'deemed approved' (DA) regulations from all else. We believe the City would be wise to keep this matter separate from all other contemplated changes. The City's proposed DA regulations focus on existing, non-conforming businesses; all other contemplated regulations are multi-faceted, applying to existing conforming and non-conforming businesses and future, contemplated businesses. At present, the full set of regulations proposed by staff are broad and relatively wide-ranging and, thus, best dealt with in two or more separate parts.

In practice, DA is focused primarily on just a few outliers in the City: businesses with a well-documented history of public safety issues. The City is in rather urgent need of expanded regulatory tools to effectively deal with such entities. Breaking apart the regulations into two parts would allow the staff to focus first & foremost on DA regulations.

To fund such regulations, we suggest the City concurrently adopt fees for initial issuance of such DA status and a schedule of fees and pass-throughs associated with monitoring and enforcement of the DA operating standards.

2. We recommend the City — when the State of California suspends an existing ABC license — immediately revoke the DA status, suspend the related City-issued conditional use permit (CUP; the permit requested in my 3 December letter) and require such business to apply for a new CUP from the City. Such application would be due if and when such business applies to the State for revocation of such license suspension or issuance of a new, follow-on ABC license.

For example, if the State suspends an existing Type 48 license issued to a business in Hayward, the licensee would then, pursuant to our recommendation, need to first obtain a new CUP from the City to allow further operation of the business, whether in its current form — after the State and City suspensions — or under the management and operation of new owners. Such requirement would allow the City to further condition the business with additional standards tailored to the previously documented problems and issues at or near such establishment.

We recommend the City provide the public with a reasonable opportunity to comment on any such new CUP. We recommend the City require a public hearing for any such CUP and allow the public to appeal any Planning Commission decision to the City Council. A thorough vetting of any proposed CUP by members of the public will help the City approve a well-crafted CUP with a high likelihood of licensee compliance.

3. At present, the City has yet to propose specific operating standards applicable to DA businesses; instead, the staff report mentions such standards ‘would be identified in the new provisions.’ We recommend the City release such draft standards soon and allow the public ample opportunity to comment thereon.

4. We recommend such operating standards differentiate between significant crimes and those of less significance; thus, a single armed assault would result in more substantive action by the City whereas a single curfew violation might trigger a different level of City response.

5. Within Hayward Municipal Code Section 10-1.2735(b)(9)(a), we recommend the City include the commission — within or immediately outside the business premises — of a criminal offense by patrons of such businesses. At present, such City Code Section is too restrictive.

6. Within Hayward Municipal Code Section 10-1.2735(b)(10)(b), we recommend the City remove the need for a ‘pattern of’ conduct in violation of other laws or regulations. In particular, we recommend the City possess broad discretion to act when the violation is violent, including a shooting, armed assault, or violent battery.

7. As Council Member Jones stated last week, ‘if a business is poorly managed, the City should shut it down’. We agree in full. Thus, we recommend the City ensure the DA operating standards give City staff all they need to close those businesses found in violation of such standards.

Planning Commission Chair Márquez and Members Faria, Lamnin, Lavelle, Loché, McDermott, and Trivedi

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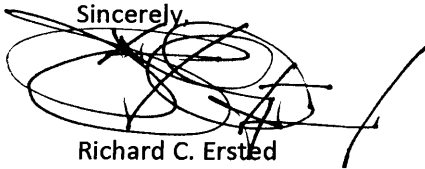
From my letter last week, significant problems seem to arise at just a few ABC-licensed businesses in Hayward. With the recent shootings at the Dirty Bird Lounge on Mission Boulevard, it's now time the City provide staff with all tools needed to promptly ensure the public safety of the City's residents, business owners and property owners.

8. At present, the staff report proposes to grant an administrative use permit (AUP) to 'certain' businesses but does not specify same. We recommend the City soon release the list of those specific businesses subject to an AUP. In general, we believe the City is best served by limiting such AUPs to a very small, carefully-selected set of businesses in very specific locations. All others should go through the City's review & approval process for CUPs.

9. Finally, we recommend the City request the State to post any and all State ABC licenses online in full. At present, City staff or others may obtain a copy of the ABC license terms and conditions only through a written or telephone request; the State is often slow to respond to requests from the public, given the present workload and staffing. It's time the State make all such license information readily available to the City Police Department and others.

Thank you very much for your consideration of the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard C. Ersted', written over a circular stamp or seal.

Richard C. Ersted

Cc: David Rizk, Director, Development Services, City of Hayward via email